

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION IV

CACR07-772

February 13, 2008

EARL RAY MAXWELL
APPELLANT
v.

AN APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT
[CR-99-558]

STATE OF ARKANSAS
APPELLEE

HON. J. MICHAEL FITZHUGH, JUDGE

AFFIRMED

Earl Ray Maxwell asserts, in this appeal, that the Sebastian County Circuit Court erred in revoking his suspended sentence because there was insufficient evidence showing that he willfully violated the terms and conditions of his suspension. We disagree and affirm.

A trial court may revoke a defendant's suspended sentence at any time prior to the expiration of the period of suspension if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of suspension. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). The trial court's decision will not be reversed on appeal unless it is clearly against the preponderance of the evidence. *Williams v. State*, 351 Ark. 229, 91

S.W.3d 68 (2002). We defer to the trial judge's superior position because the determination of a preponderance of the evidence turns on questions of credibility and the weight to be given testimony. *Richardson v. State*, 85 Ark. App. 347, 157 S.W.3d 536 (2004).

On January 25, 2007, the State petitioned to revoke Maxwell's suspended sentence, which was imposed after he was found guilty of possessing marijuana with intent to deliver. This petition was amended on two occasions, with each petition alleging that Maxwell committed additional drug offenses in violation of the terms of his suspension, which required that he refrain from criminal activity.

The evidence at Maxwell's April 18 revocation hearing showed that he sold methamphetamine to a confidential informant. In his residence, he possessed a safe and laundry basket holding methamphetamine and twenty-five pills were found in the pockets of a pair of jeans. He was arrested February 27 while possessing a soda can containing .2827 grams of methamphetamine and on April 9 police recovered digital scales, \$281 in cash, and two syringes from Maxwell's vehicle during a traffic stop.

This evidence is sufficient to show that Maxwell violated the terms of his suspended sentence. Therefore, we affirm.

Affirmed.

PITTMAN, C.J. and GLOVER, J., agree.